

Exhibit 167

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp. et al.
Civil Action No. 07-10248-PBS

Exhibit to the July 24, 2009, Declaration of James J. Fauci
In Support of Plaintiff's Motion for Partial Summary Judgment and
In Opposition to the Roxane Defendants' Motion For Partial Summary Judgment

AdminaStar Federal (Cheryl Eiler) - Vol. II

August 27, 2008

Indianapolis, IN

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION:
PRICE LITIGATION) 01-CV-12257-PBS

-----X Judge Patti B. Saris
U.S. ex re. Ven-A-Care of)
the Florida Keys, Inc., v.)
Abbott Laboratories, Inc.,)
et al. No. 06-CV-11337-PBS)

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VIDEOTAPED DEPOSITION OF ADMINASTAR FEDERAL

by CHERYL EILER - VOLUME II

The continuation of the videotaped deposition of
ADMINASTAR FEDERAL by CHERYL EILER, produced and
sworn before me, Aprille Lucas, RPR, Notary Public
in and for the County of Hamilton, State of Indiana,
taken on behalf of the Defendant Dey at the offices
of National Government Services, 8115 Knue Road,
Indianapolis, Indiana, August 27, 2008, at 9:06 a.m.,
pursuant to the Federal Rules of Civil Procedure.

Henderson Legal Services, Inc.

202-220-4158

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August 27, 2008

Indianapolis, IN

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1 A P P E A R A N C E S

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22 (CONTINUED)

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1 pay all the claims that came in for the third
2 quarter of 1998, is that correct?

3 A. For the -- as far as any claim we
4 received for 1998 in that time frame, yes.

5 Q. So it's not possible that only, that
6 one of these would have been affected for a
7 portion of that quarter, and then another one
8 would be --

9 A. No.

10 Q. Now, if we flip to the next document,
11 which is Bates number AWP036-2536, this appears
12 to be a document -- or I'm sorry, an array for
13 the fourth quarter of 1998, is that right?

14 A. Yes.

15 Q. Now, one question I had with regard to
16 the first Dey price, which in this case it also
17 was not considered, is that right?

18 A. Yes.

19 Q. Under the form column it indicates SOL,
20 IH, and then PF is in parentheses. Do you have
21 any sense as to what that code mean?

22 A. That means it was listed as

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1 preservative-free, so that is one of those ones
2 that we would not have used. So that is why it
3 was pulled, probably.

4 Q. And you did not include this
5 preservative-free form, based on guidelines from
6 HCFA, is that right?

7 A. Based on clarification that we received
8 from CMS that we would not include those unless
9 it was in the narrative description of the code.

10 Q. To your knowledge, did the other
11 carriers also exclude this particular price from
12 the arrays?

13 A. It was my understanding that we were
14 all consistent in that, yes.

15 Q. And you indicated that you contacted
16 HCFA to seek clarification with regard to
17 preservative-free solutions, is that right?

18 A. We asked for clarification on certain
19 things, yes.

20 Q. And you recall specifically requesting
21 clarification on preservative-free solutions?

22 A. Yes.

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1 Q. And HCFA indicated to you that they
2 should not be included?

3 A. Only if it was the only thing
4 available, or the narrative description stated
5 that.

6 Q. Now, it indicates, if we flip to the
7 next page of this document, which is Bates number
8 AWP039-1229, this appears to be for the third
9 quarter of 1999, is that right?

10 A. Yes.

11 Q. Now, I submit to you that I was unable
12 to find the first two quarters of 1999. Do you
13 recall if you prepared arrays for ipratropium
14 during that time?

15 A. Without pulling my folder, I can only
16 say that I would have checked that drug for those
17 quarters. Now, whether there was an update or
18 not, without looking, I would not be able to tell
19 you.

20 Q. If there was no update to the pricing
21 for those quarters, would you have still prepared
22 a separate array for those two quarters?

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1 A. What I would normally do is like I
2 would have taken the July array and used it as a
3 comparison for the October or the next quarter; I
4 would use it for the next one.

5 So there would have been a sheet in the
6 folder for the July in the October folder, and
7 then I would have checked it. I tried to make
8 sheets for each quarter. I don't know what
9 happened to those two quarters, without going
10 back.

11 Q. Do you recall any quarters where you
12 did not make sheets for all of the drugs at issue
13 that you were pricing?

14 A. I did not update them every -- I did
15 not do a printout every quarter. I did look at
16 every code every quarter. And if there was no
17 changes, then that's what would have stayed in
18 that folder.

19 Q. Now, in this document, which is for the
20 third quarter of 1999, it indicates in the source
21 field April '99 RedBook database. What does that
22 phrase represent?

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1 A. That's when we started getting the CD
2 rom program quarterly for the RedBook. We still
3 received the monthly and the annual, but we used
4 the online, because it was more updated than the
5 books.

6 Q. So you indicate that, by database,
7 you're referring to the CD roms?

8 A. The CD rom program, yes.

9 Q. If you recall, we discussed yesterday
10 that Palmetto had a RedBook database. Is that
11 something different than the database that you're
12 referring to here?

13 A. I don't know how they referred to
14 theirs. That's just the way I referred to it.

15 Q. So you referred to the CD roms --

16 A. As the database.

17 Q. -- as the database. Do you recall if
18 you kept printouts or electronic copies of the
19 quarterly RedBook CDs as you received them?

20 A. No. The only thing I would keep copy
21 of is if there was a change, then I would take a
22 print of the screen to indicate the change,

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1 MR. HENDERSON: Objection.

2 A. No.

3 BY MS. RAMSEY:

4 Q. Looking at the next bullet below, and
5 this is just a general pricing question, not
6 necessarily related to the DOJ AWPs, it says, the
7 DMERCs eliminated certain types of forms when
8 establishing their fees, for example, carpu-ject
9 and preservative-free items. These items were
10 shown to be more expensive.

11 Do you see that?

12 A. Yes.

13 Q. I'd like to talk about this bullet for
14 just a minute. Now, this is indicating that in
15 certain situations certain products or forms are
16 not used in the calculation of median prices,
17 correct?

18 A. Correct.

19 Q. And here are two examples were
20 mentioned, and am I pronouncing that correctly,
21 carpu-ject?

22 A. That's the way I would have pronounced